

1)
In Convention,
Assembly Chamber, State Capitol

Sacramento.

Wednesday Jan 8th 1879

of Convention met pres-
sant to adjournment

President Foy in the Chair.

Roll called and

The following members
were ~~present~~ absent.

2/
Messrs.

Barnes

Berry

Boggs

Campbell

Charles

Cowden

Dean

Evey

Fawcett

Glascock

Graves

Gregg

Hager

~~Hale~~

Harvey

Jones

Kenney

Keys

Klein

Lindow

Martin of Alameda

~~McGee~~

Miller

Murphy

O'Sullivan

Porter

Schomp

~~Shoemaker~~

Terry

Van Vorhies

Walker of Marin

3)

Leave of absence

Leave of absence was granted for one day to Mrs. Evey, and indefinite leave to Messrs. Cowden, ~~Steel~~ and Graves, on account of sickness.

on motion of Mrs. Bursten
the reading of the Journal
was dispensed with
and the same approved.

Committee of the Whole.

On motion of Mrs. Edgerton
the Convention resolved
itself into Committee of
the Whole - President

4)

Hoge in the Chair to further
considers the article on
Revenue and Taxation

at 12 O'Clock and 16
Minutes P M. the Com-
mittee arose, reported the
article back with sundry
amendments.

On Convention.

On motion of Mrs. Edgerth
480 copies of the article
on Revenue and Tax-
ation ^{with the} ~~to~~ amendments
adopted in Committee
of the whole were or-

5)

direct printed

on motion of Mrs Hilborn
The journal clerk was
granted leave of absence
for the remainder of the
week, upon leaving some
competent person to per-
form his duties, without
expense to the convention.

Recess
at 12 o'clock and twenty
minutes P.M. the convention
took a recess till two
o'clock P.M.

Afternoon Session

The Convention re-assem-
bled at two o'clock P.M.
President Hoge in the
chair

6)

Quorum present.

Committee of the whole.

On Motion of Mrs. Wilson
of the 4th district the con-
vention resolved itself
into Committee of the
whole - President Gholz in
the Chair - to consider the
following articles as
reported by the com-
mittee on Judiciary and
Judicial department

7
Amendment.

No. 503.

INTRODUCED BY COMMITTEE ON JUDICIARY AND JUDICIAL DEPARTMENT.

NOVEMBER 13TH, 1878.

READ, ORDERED TO LIE ON TABLE, AND NINE HUNDRED AND SIXTY COPIES
PRINTED.

ARTICLE VI. —

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of the State shall be vested in the
2 Senate sitting as a Court of Impeachment, in a Supreme Court, Superior
3 Courts, Justices of the Peace, and such inferior Courts as the Legislature
4 may establish in any incorporated city or town, or city and county.

SEC. 2. The Supreme Court shall consist of a Chief Justice and six
2 Associate Justices. The Court may sit in departments and in bank, and shall
3 always be open for the transaction of business. There shall be two depart-
4 ments, denominated, respectively, Department One and Department Two.
5 The Chief Justice shall assign three of the Associate Justices to each depart-
6 ment, and such assignment may be changed by him from time to time. The

7 Associate Justices shall be competent to sit in either department, and may
8 interchange with each other by agreement among themselves or as ordered
9 by the Chief Justice. Each of the departments shall have the power to hear
10 and determine causes and all questions arising therein, subject to the provis-
11 ions hereinafter contained in relation to the Court in bank. The presence of
12 three Justices shall be necessary to transact any business in either of the
13 departments, except such as may be done at Chambers, and the concurrence
14 of three Justices shall be necessary to pronounce a judgment. The Chief
15 Justice shall apportion the business to the departments, and may, in his dis-
16 cretion order any cause pending before the Court to be heard and decided
17 by the Court in bank. The order may be made before or after judgment
18 pronounced by a department; but where a cause has been allotted to one of
19 the departments, and a judgment pronounced thereon, the order must be made
20 within thirty days after such judgment, and concurred in by two Associate
21 Justices, and if so made it shall have the effect to vacate and set aside the
22 judgment. If the order be not made within the time above limited, the judg-
23 ment shall be final. No judgment by a department shall become final until
24 the expiration of the period of thirty days aforesaid, unless approved by the
25 Chief Justice, in writing, with the concurrence of two Associate Justices.
26 The Chief Justice may convene the Court in bank at any time, and shall be
27 the presiding Justice of the Court when so convened. The concurrence of
28 four Justices present at the argument shall be necessary to pronounce a judg-
29 ment in bank; but if four Justices, so present, do not concur in a judgment,
30 then all the Justices qualified to sit in the cause shall hear the argument; but
31 to render a judgment a concurrence of four Judges shall be necessary. In
32 the determination of causes, all decisions of the Court in bank or in depart-
33 ments shall be given in writing, and the grounds of the decision shall be
34 stated. The Chief Justice may sit in either department, and shall preside

35 when so sitting; but the Justices assigned to each department shall select one
36 of their number as presiding Justice. All sessions of the Court, whether in
37 bank or in departments, shall be held at the Capital of the State. In case of
38 the absence of the Chief Justice from the place at which the Court is held, or
39 his inability to act, the Associate Justices shall select one of their own num-
40 ber to perform the duties and exercise the powers of the Chief Justice during
41 such absence or inability to act.

SEC. 3. The Chief Justice and the Associate Justices shall be elected
2 by the qualified electors of the State at large, at the general State elections,
3 at the times and places that State officers are elected; and the term of office
4 shall be twelve years, from and after the first Monday of January next suc-
5 ceeding their election; *provided*, that the six Associate Justices elected at the
6 first election shall, at their first meeting, so classify themselves, by lot, that
7 two of them shall go out of office at the end of four years, two of them at
8 the end of eight years, and two of them at the end of twelve years, and an
9 entry of such classification shall be made in the minutes of the Court in
10 bank, signed by them, and a duplicate thereof shall be filed in the office of
11 the Secretary of State. If a vacancy occur in the office of a Justice, the
12 Governor shall appoint a person to hold the office until the election and
13 qualification of a Justice to fill the vacancy, which election shall take place

14 at the next succeeding general election, and the Justice so elected shall hold
 15 the office for the remainder of the unexpired term. The first election of the
 16 Justices shall be at the first general election after the adoption and ratifica-
 17 tion of this Constitution.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all
 2 cases in equity; also in all cases at law which involve the title or possession
 3 of real estate, or the legality of any tax, impost, assessment, toll, or munici-
 4 pal fine, or in which the demand, exclusive of interest, or the value of the
 5 property in controversy, amounts to three hundred dollars; also in cases of
 6 forcible entry and detainer, and in all such probate matters as may be pro-
 7 vided by law; also in all criminal cases amounting to felony on questions of
 8 law alone. The Court shall also have power to issue writs of mandamus, cer-
 9 tiorari, prohibition, and habeas corpus, and also all writs necessary or proper
 10 to the complete exercise of its appellate jurisdiction. Each of the Justices
 11 shall have power to issue writs of habeas corpus to any part of the State,
 12 upon petition by or on behalf of any person held in actual custody, and may

13 make such writs returnable before himself, or the Supreme Court, or before
14 any Superior Court in the State, or before any Judge thereof.

SEC. 5. The Superior Courts shall have original jurisdiction in all
2 cases in equity, and in all cases at law which involve the title or possession
3 of real property, or the legality of any tax, impost, assessment, toll, or municipal
4 fine, and in all other cases in which the demand, exclusive of interest or the
5 value of the property in controversy, amounts to three hundred dollars, and
6 in all criminal cases amounting to felony, and cases of misdemeanor not oth-
7 erwise provided for; also, in actions of forcible entry and detainer, of pro-
8 ceedings in insolvency, of actions to prevent or abate a nuisance; also, of all
9 matters of probate, and, also, of divorce and for annulment of marriage, and
10 all such special cases and proceedings as are not otherwise provided for. And
11 said Courts shall have the power of naturalization, and to issue papers there-
12 for. They shall have appellate jurisdiction in such cases arising in Justices'
13 and other inferior Courts in their respective counties as may be prescribed by
14 law. Said Courts shall be always open (legal holidays and non-judicial days
15 excepted), and their original jurisdiction shall extend to all parts of the State.
16 Said Courts, and their Judges, shall have power to issue writs of mandamus,

17 certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on
18 behalf of any person in actual custody, in their respective counties.

SEC. 6. There shall be in each of the organized counties, or cities and
2 counties, of the State, a Superior Court, for each of which at least one Judge
3 shall be elected by the qualified electors of the county, or city and county, at
4 the general State election; *provided*, that in the City and County of San Fran-
5 cisco there shall be elected twelve Judges of the Superior Court, any one or
6 more of whom may hold Court. There may be as many sessions of said
7 Court, at the same time, as there are Judges thereof. The said Judges shall
8 choose from their own number a presiding Judge, who may be removed at
9 their pleasure. He shall distribute the business of the Court among the
10 Judges thereof, and prescribe the order of business. The judgments, orders,
11 and proceedings of any session of the Superior Court, held by any one or
12 more of the Judges of said Courts, respectively, shall be equally effectual as
13 if all the Judges of said respective Courts presided at such session. In each
14 of the Counties of Sacramento, Los Angeles, and Alameda, there shall be
15 elected two such Judges. The term of office of Judges of the Superior Courts

16 shall be six years, from and after the first Monday of January next succeed-
 17 ing their election ; *provided*, that the twelve Judges of the Superior Court,
 18 elected in the City and County of San Francisco at the first election held
 19 under this Constitution, shall, at their first meeting, so classify themselves, by
 20 lot, that four of them shall go out of office at the end of two years, and four
 21 of them shall go out of office at the end of four years, and four of them shall
 22 go out of office at the end of six years, and an entry of such classification
 23 shall be made in the minutes of the Court, signed by them, and a duplicate
 24 thereof filed in the office of the Secretary of State. The first election of
 25 Judges of the Superior Courts shall take place at the first general election
 26 held after the adoption and ratification of this Constitution. If a vacancy
 27 occur in the office of Judge of a Superior Court, the Governor shall appoint a
 28 person to hold the office until the election and qualification of a Judge to fill
 29 the vacancy, which election shall take place at the next succeeding general
 30 election, and the Judge so elected shall hold office for the remainder of the
 31 unexpired term.

14
SEC. 7. In any county, or city and county, other than the City and
2 County of San Francisco, in which there shall be more than one Judge of
3 the Superior Court, the Judges of such Court may hold as many sessions of
4 said Court at the same time as there are Judges thereof, and shall apportion
5 the business among themselves as equally as may be.

SEC. 8. A Judge of any Superior Court may hold a Superior Court
2 in any county, at the request of a Judge of the Superior Court thereof, and
3 upon the request of the Governor it shall be his duty so to do.

SEC. 9. The Legislature shall have no power to grant leave of absence
2 to any judicial officer; and any such officer who shall absent himself from
3 the State for more than sixty consecutive days shall be deemed to have for-
4 feited his office. The Legislature of the State may at any time, two-thirds of
5 the members of the Senate and two-thirds of the members of the Assembly
6 voting therefor, increase or diminish the number of Judges of the Superior

7 Court in any county, or city and county, in the State; *provided*, that no such
8 reduction shall affect any Judge who has been elected.

SEC. 10. Justices of the Supreme Court, and Judges of the Superior
2 Courts, may be removed by concurrent resolution of both Houses of the
3 Legislature, adopted by a two-third vote of each House. All other judicial
4 officers, except Justices of the Peace, may be removed by the Senate on the
5 recommendation of the Governor, but no removal shall be made by virtue of
6 this section, unless the cause thereof be entered on the Journal, or unless the
7 party complained of has been served with a copy of the complaint against
8 him, and shall have had an opportunity of being heard in his defense. On
9 the question of removal, the ayes and noes shall be entered on the Journal.

SEC. 11. There shall be one Justice of the Peace elected in each town-
2 ship in the State, and the Legislature shall determine the number of Justices
3 of the Peace to be elected in each incorporated city and town, or city and
4 county, and shall fix by law the powers, duties, and responsibilities of Justices
5 of the Peace; *provided*, such powers shall not in any case trench upon the
6 jurisdiction of the several Courts of record, except that said Justices shall
7 have concurrent jurisdiction with the Superior Courts in cases of forcible
8 entry and detainer, where the rental value does not exceed twenty-five dollars
9 per month and where the whole amount of damages claimed does not exceed
10 two hundred dollars.

SEC. 12. The Supreme Court, the Superior Courts, and such other
2 Courts as the Legislature shall prescribe, shall be Courts of record.

SEC. 13. The Legislature shall fix by law the jurisdiction of any inferior Courts which may be established in pursuance of section one of this article, and shall fix by law the powers, duties, and responsibilities of the Judges thereof.

SEC. 14. The Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officers, and shall fix by law their duties and compensation. County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties, or cities and counties. The Legislature may also provide for the appointment by the several Superior Courts of one or more Commissioners in their respective counties, or cities and counties, with authority to perform Chamber business of the Judges of the Superior Courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law.

SEC. 15. No judicial officer, except Justices of the Peace and Court Commissioners, shall receive to his own use any fees or perquisites of office.

SEC. 16. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient, and all opinions shall be free for publication by any person.

SEC. 17. The Justices of the Supreme Court and Judges of the Superior Courts shall severally, at stated times during their continuance in office, receive from the State treasury, for their services, a compensation which shall not be increased or diminished during the term for which they shall have been elected. During the term of the first Judges elected under this Constitution, the annual salaries of the Justices of the Supreme Court shall be six thousand dollars each. The Superior Judges shall be divided into four classes: Those of the City and County of San Francisco, and of the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Sacramento, and Sonoma, shall constitute the first class, and shall each receive an annual salary of five thousand dollars, payable quarterly; those of the Counties of Butte, El Dorado, Amador, Colusa, Contra Costa, Humboldt, Mendocino, Monterey, Napa, Nevada, Placer,

13 Santa Cruz, Solano, Tulare, Yolo, Kern, Yuba, and San Bernardino, shall
14 constitute the second class, and shall receive an annual salary of four thousand
15 dollars each, payable quarterly; those of the Counties of Calaveras, Fresno,
16 Lake, Marin, Merced, Plumas, San Benito, San Diego, San Luis Obispo, San
17 Mateo, Santa Barbara, Sierra, Shasta, Siskiyou, Stanislaus, Sutter, Tehama,
18 Tuolumne, and Ventura, shall constitute the third class, and receive an annual
19 salary of three thousand dollars each, payable quarterly; and those of all other
20 counties of the State, not above enumerated, shall constitute the fourth class,
21 and receive an annual salary of two thousand dollars each, payable quarterly.

SEC. 18. The Justices of the Supreme Court, and the Judges of the
2 Superior Courts, shall be ineligible to any other office than a judicial office
3 during the term for which they shall have been elected.

SEC. 19. Judges shall not charge juries with respect to matters of fact,
2 but may state the testimony and declare the law.

SEC. 20. The style of all process shall be, "The People of the State of
2 California," and all prosecutions shall be conducted in their name and by their
3 authority.

SEC. 21. The Justices shall appoint a Reporter of the decisions of the
2 Supreme Court, who shall hold his office and be removable at their pleasure.
3 He shall receive an annual salary of twenty-five hundred dollars, payable
4 quarterly.

SEC. 22. The Judges and Justices of the Peace shall not practice law
2 in any Court of the State during their continuance in office.

SEC. 23. A grand jury shall be composed of twelve jurors, and a concurrence of nine shall be necessary to the making of a presentment or the finding of an indictment.

SEC. 24. No one shall be eligible to the office of Justice of the Supreme Court unless he be at least thirty-five years of age, and shall have been admitted to practice before the Supreme Court of the State; and no one shall be eligible to the office of Judge of a Superior Court unless he be at least thirty years of age, and shall have been admitted to practice before the Supreme Court of the State.

Judiciary

22)

at 5 o'clock and 5 minutes P.M. the committee ~~report~~ arose, reported progress and asked leave to sit again.

at five o'clock and five minutes P.M. on motion of Mrs. Shoemaker the convention adjourned

1/8/79

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